

**REMARKS**

Reconsideration of this Application as amended is respectfully requested. This AMENDMENT AND REPLY AFTER FINAL REJECTION is filed in response to the Office Action made Final mailed June 12, 2007 (the "present Office Action"). Claims 1, 3 to 11, 13 to 16, and 18 to 20, 22, and 23 are presently pending in the application with currently amended Claim 1 being independent and all other claims being directly or indirectly dependent thereon. Claims 22 and 23 are withdrawn from consideration as being directed to a non-elected Species 2 (the embodiment of Figs. 13-16). Currently independent claim 1 is generic to all claims

Based on these Remarks, Applicant respectfully requests that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

***Rejections under 35 U.S. C. § 102(b)*****Claims 1, 4, 6, 7, 9, 10, 11, 14, 15, 16, 18, and 19**

The present Office Action has rejected Claims 1, 4, 6, 7, 9, 10, 11, 14, 15, 16, 18, and 19 under 35 U.S.C. § 102(b) as being anticipated by the newly cited and applied reference of U.S. Patent No. 3,207,375 to Bereziat et al. (Bereziat). In this regard, the subject Office Action states:

"Bereziat shows ... Bereziat shows a container closure as seen in Fig. 7-10, having a base cap 1a including an inner and an outer skirt, a frangible membrane line 4a connected in an inclined line, an over cap 8a with inner and outer skirts having a knife and pusher element 9a and secured to the base cap by beads 16 and 17, the knife is inserted in a packet {sic} at the lowest point in the frangible membrane, as seen in Fig. 7, and the over cap remains fix in the axial direction

relative to the base cap as the over cap is turned to break the frangible membrane, the membrane hinges on the uncut section of the frangible membrane line.

"In reference to claims 4, 9, 11 and 16; the rotation range of the over cap with respect to the base cap is approximately from 0 degrees to 330 degrees.

"In reference to claims 6, 7 and 18; Bereziat shows a tamper evident projecting element 18 that is cut by the edges 19 or 20, the breakage of element 18 produces an audible sound."

Applicant respectfully traverses the above rejection of claims as the same may be attempted to be applied to currently amended independent Claim 1. No new matter is introduced by the Claim 1 amendment now referencing the "closure comprising" as support thereof is inherent in the context thereof and is replete in the specification and drawings. Support for the "cylindrical well defining a chamber for containing and supporting a consumable or other item located therein" can be found at page 9 paragraph 0040 of the specification and in the drawings.

Applicant's independent Claim 1 defines a closure for a container having an opening, the closure comprising:

**a base cap including an outer skirt having container-engaging structure, a cylindrical well defining a chamber for containing and supporting a consumable or other item located therein, a frangible membrane connected to the well along an inclined line of weakness and by a hinge member within the well, the hinge member having a pocket extending downward adjacent lower and upper terminuses of the line of weakness; and**

**an overcap including a body having gripping structure, an inner skirt received within and rotatably connected to the well, and a cutting member depending from a lower end of the inner skirt substantially received within the pocket such that the cutting member**

extends below the lower terminus when the base cap is assembled to the overcap, whereby the cutting member severs the line of weakness upon substantial rotation of the overcap with respect to the base cap;

wherein the base cap includes an annular groove and the overcap includes a locking structure rotatably received within the groove to axially fix the overcap with respect to the base cap during severing of the line of weakness.

Applicant submits that amended independent Claim 1, particularly the bold print language above, defines over the cited and applied Bereziat reference. Such features are not taught or suggested by Bereziat.

Rather the Bereziat Fig.7-10 embodiment discloses a closure assembly for containers which includes a pouring spout supported by a capsule 1a that is comprised of a cylindrical tube 2a opened over a longitudinal area 11 which terminates at its top in a funnel portion<sup>12</sup>. *See* Bereziat, col. 3, lines 62-68. The tube 2a is closed by an end-piece 14 which joins the inner wall of the tube at an oblique plane 15 via a peripheral score line 4a. *See* Bereziat, col. 3, lines 70-73. A cap 7a fitting elastically over the capsule 1a has an eccentric blade 9a which in its inoperative position closes the opening 11 of the tube. *See* Bereziat, col. 3 line 74 to col. 4, line 5.

At Column 4 lines 13 to 31 Bereziat teaches:

"In the configuration of FIG. 7, the container is hermetically sealed by the end-piece 14 and can be opened merely by rotating cap 7a about its axis. Rigid blade 9a acts as a knife and cuts through the score line 4a of said end-piece at the same time as either of bevels 19 or 20, likewise acting as a knife, cuts off the peg 18 which ensured inviolability of the bottle seal. **At the end of the cutting**

operation, the cap is removed and be sliced end-piece 14 pulled off, following which a pouring spout assumes the configuration of FIG. 9.

When the liquid is poured, the same is channeled by the funnel portion 12 and should any drops tend to drip therefrom when the bottle is placed upright again, they are collected in a bowl 13 which communicates directly with the interior of the bottle and said drops spill thereinto immediately. This is practically advantageous in the case of a bottle containing a greasy liquid, such as oil, in which case the pouring spout ensures that the bottle is kept clean." {bold print emphasis added}

Berezait does not teach or suggest (1) a base cap having a cylindrical well defining a chamber for containing and supporting a consumable or other item located therein, (2) an overcap having an inner skirt received within such a well, (3) a hinge member having a pocket extending downward adjacent lower and upper terminuses of a frangible membrane's inclined line of weakness, and (4) a cutting member substantially received within such a pocket that extends below the lower terminus of the frangible membrane's inclined line of weakness when the base cap is assembled to the overcap.

Initially, Berezait fails to disclose a well for supporting and containing a consumable or other item located therein sealed by a frangible membrane that is opened to release the same to the interior of the container. Thus, Berezait fails to disclose the presently claimed invention.

Indeed, Berezait teaches a cap having a purpose ditinct from Applicant's currently amended independent Claim 1. Specifically, Berezait at Column 4, lines 19 to 31 teaches of a cutting operation to break a score line 4a of hermetically sealed end piece 14 at the

same time either of bevels 19 or 20 likewise acting as a knife cuts off the peg 18 of the bottle seal. At the end of these plural cutting operations, the cap is removed and end piece 14 is pulled off to expose the pouring spout depicted in Fig. 9. The funnel portion 12 of the pouring spout channels liquid such that if any drops drip therefrom when the bottle is placed upright again, they are collected in the bowl 13 exterior to the pouring spout well. Bowl 13 is communicative with the interior of the bottle to immediately spill the drops therein. This pouring spout arrangement is taught to be advantageous to maintain a bottle for greasy liquids, such as an oil, clean – a purpose distinct from Applicant's currently amended Independent Claim 1 defining a cap that has a cylindrical well defining a chamber for containing and supporting a consumable or other item located therein to be ultimately released into the interior of the container upon severing of a line of weakness of the frangible membrane.

Further, rather than the pulling off of Brezait's end piece 14, Applicant's cap teaches a hinged member having a defined pocket such that the chamber's load cannot affect the cutting operation. Also the hinge member, by being offset ("extending downward adjacent lower and upper terminuses of the line of weakness"), allows for a very strong hold. This is also important to guard against a user choking upon a severed frangible membrane. Still further, the cutting member provides a nice camming arrangement to keep the frangible membrane open once its inclined line of weakness is severed.

Also, in contrast to Berezait, the pocket of the present invention is dimensioned so that the cutting member is "substantially received" within the pocket upon assembly. The pocket is dimensioned to receive the cutting member such that the

cutting edge of the cutting member that sits in the pocket does not contact the line of weakness until the overcap is rotated a predetermined angle. See ¶ 35, page t: and ¶ 39, page 9. Thus, a substantial portion or more than just the mere bottom point of the cutting member is received in the pocket.

Still further, applicant's independent claim 1 provides for a cutting member substantially received within such a pocket that extends below the lower terminus of the frangible membrane's line of weakness. As seen at Fig. 7, Berezait's eccentric blade 9a extends downward adjacent, not below, the lower terminus of the oblique plane 15 of peripheral score line 4a when the cap 7a is assembled on the container capsule 1a. Fig. 9 also illustrates the oblique plane 15 in the same fashion.

Applicant respectfully submits that Berezait fails to teach or suggest the present invention as now amended.

4

*Rejections under 35 U.S. C. § 103(a)*

**Claims 3, 5, 8, 13, and 20**

The present Office Action has rejected Claims 3, 5, 8, 13, and 20 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,207,375 to Berezait et al. in view of WO 0108996A1 to Yu. In this regard it is stated that Berezait shows all claim features as previously asserted except for an angled knife edge, threads to secure the base cap to the container, a safety band, and sealing beads in the inner skirt of the overcap and that Yu supplies such missing elements. It is asserted that one skilled in the art at the time of applicant invention

"would modify the device of Berezait to include an angle knife edge, thread to secure the closure to the container, a safety band and sealing beads to reduce the material required to make the knife, attached the closure to conventional threaded

containers, prevent tampering with the content and beads to seal liquid consumable product store in the closure cap respectively as taught by Yu."

Applicant respectfully traverses the rejections of claims under 35 U.S.C. § 103(a) as the same may be attempted to be applied to Applicant's currently amended independent Claim 1 on the same basis as advanced above with respect to the Berezait reference. It is noted that Claims 3, 5, 8, 13, and 20 are dependent claims directly or indirectly dependent on independent Claim 1 and hence allowable for the same reasons as advanced in support of independent claim 1.

Additionally on the basis of the foregoing REMARKS it is submitted that Yu does not teach or suggest several aspects of Applicant's amended claim 1 closure, the attempted combination does not re-create Applicant's amended claim 1 closure, and the attempted combination is improper since there is no motivation, desirability, or suggestion for altering Berezait in view of selected elements of the Yu disclosure. The Examiner is invited to review Applicant's arguments distinguishing the Yu disclosure found in the prior Amendment and Reply filed July 28, 2006 herein.

***Request For Withdrawal of Finality***

Applicant also respectfully submits that the present Office Action has prematurely made a final rejection of claims. Pursuant to MPEP § 706.07(c), the Applicant hereby requests the Examiner to withdraw the finality of the present Office Action. The cited and applied Berezait reference is a newly cited patent. Applicant's former amendments did not necessitate the new grounds of rejection as the reference is not applied to the specific language of the prior Claim 1 amendment nor does the reference teach or suggest the specific language of the prior Claim 1 amendment. Applicant respectfully submits

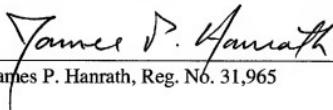
that the considerations set forth at MPEP § 706.07 support a withdrawal of the finality of the present Office Action.

***Conclusion.***

For at least the foregoing reasons, Applicant respectfully submits that the Bereziat and Yu references, taken individually or combined with each other, do not anticipate or render obvious Applicant's independent Claim 1 as now amended. Hence all remaining pending claims are believed allowable due to their direct or indirect dependency thereon.

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. It is submitted that the application is now in condition for allowance and an early and favorable action to that end is requested. If any questions or issues remain, the resolution of which the Examiner feels would be advanced by a telephonic conference with Applicant' attorney, he is invited to contact the undersigned at the telephone number noted below.

Respectfully submitted,



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Dated: August 10, 2007

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